

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2009

Marilyn Kelly,
Chief Justice

137563

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 137563
COA: 287028
Saginaw CC: 07-028993-FJ

BRIAN SCOTT HERNANDEZ,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 19, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Saginaw Circuit Court, and we REMAND this case to the trial court for resentencing. Under MCL 769.1(3), the trial court must conduct a hearing at a juvenile's sentencing to determine whether to impose a sentence that commits the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, or to impose an adult sentence. If the prosecutor and the defendant agree, the sentencing court may waive the hearing requirements of MCL 769.1(3). If the hearing is waived, the court may place the juvenile on probation and commit the juvenile to an institution or agency described in the youth rehabilitation services act, but the court is barred from imposing any other sentence provided by law for an adult offender. MCL 769.1(4). Here, the hearing required by MCL 769.1(3) was waived, but an adult sentence was imposed, contrary to the provisions of MCL 769.1(4).

We do not retain jurisdiction.



s0325

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2009

Corbin R. Davis

Clerk